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By: **Delegate Kopp**

Introduced and read first time: February 9, 2001

Assigned to: Appropriations

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A BILL ENTITLED

1 AN ACT concerning

2 **State's Right of Recovery - Grant Programs - Local Government Exemptions**

3 FOR the purpose of exempting counties, Baltimore City, and municipal corporations  
4 from the State's right to recover, under certain circumstances, certain funds  
5 disbursed to certain grant programs; and generally relating to exempting local  
6 government from the State's right to recover certain funds disbursed to certain  
7 grant programs.

8 BY repealing and reenacting, with amendments,  
9 Article 70B - Department of Aging  
10 Section 30  
11 Annotated Code of Maryland  
12 (1998 Replacement Volume and 2000 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article 83C - Juvenile Justice  
15 Section 4-106  
16 Annotated Code of Maryland  
17 (1998 Replacement Volume and 2000 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article - Health - General  
20 Section 24-606 and 24-706  
21 Annotated Code of Maryland  
22 (2000 Replacement Volume)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
24 MARYLAND, That the Laws of Maryland read as follows:

1 **Article 70B - Department of Aging**

2 30.

3 (a) (1) Under the conditions of subsection (b) of this section, the State may  
4 recover State grant funds.5 (2) THE STATE MAY NOT RECOVER STATE GRANT FUNDS UNDER THE  
6 CONDITIONS OF SUBSECTION (B) OF THIS SECTION FROM A COUNTY, BALTIMORE  
7 CITY, OR MUNICIPAL CORPORATION THAT IS THE LESSOR OF PROPERTY ON WHICH A  
8 PROJECT IS CONSTRUCTED OR A FACILITY IS OPERATED.9 (b) The State may recover State grant funds if, within 15 years of the  
10 completion of a project:11 (1) An interest in property with respect to which funds have been paid  
12 under this Program is assigned, transferred, or conveyed:13 (i) To any person, agency, or organization which has not been  
14 approved by the Board of Public Works as transferee; or

15 (ii) For use other than as a senior citizen activities center; or

16 (2) Property with respect to which funds have been paid under this  
17 Program ceases to be operated as a senior citizen activities center.

18 (c) The amount of State recovery shall be:

19 (1) An amount bearing the same ratio to the then current value of so  
20 much of the property as constituted a project, as the amount of State funds bore to the  
21 total cost of all eligible work; plus22 (2) All costs and reasonable attorney fees incurred by the State in  
23 recovery proceedings.24 (d) (1) Before the payment of State funds under this Program, the grantee  
25 shall record the notice of the State's right to recovery in the land records of the  
26 jurisdiction in which the senior center is or will be located.27 (2) The grantee shall provide evidence of the recordation to the office  
28 prior to the payment of State funds.

29 (3) The recording of the notice:

30 (i) Does not create any lien against the property; but

31 (ii) Shall constitute notice to any potential transferee, potential  
32 creditor, or other interested party of the possibility that the State may obtain a lien  
33 under §§ 26 through 32 of this subtitle.

## Article 83C - Juvenile Justice

1 4-106.

2 (A) (1) SUBJECT TO SUBSECTIONS (B) OR (D) OF THIS SECTION, THE STATE  
3 MAY RECOVER STATE FUNDS DISBURSED UNDER THIS TITLE.

4 (2) THE STATE MAY NOT RECOVER FUNDS UNDER THE CONDITIONS OF  
5 SUBSECTIONS (B) OR (D) OF THIS SECTION FROM A COUNTY, BALTIMORE CITY, OR  
6 MUNICIPAL CORPORATION THAT IS THE LESSOR OF PROPERTY ON WHICH A PROJECT  
7 IS CONSTRUCTED OR A FACILITY IS OPERATED.

8 [(a)] (B) If, within 30 years after completion of a project, a juvenile program,  
9 with respect to which funds have been paid under this title is sold or transferred to  
10 any person, agency, or organization that would not qualify as an applicant under this  
11 title, or that is not approved as a transferee by the Board of Public Works, or if, within  
12 the same period, such a juvenile program ceases to be a "facility" as defined in this  
13 title, the State may recover from either the transferor or transferee or, in the case of  
14 a juvenile program that has ceased to be a facility as defined in this title, from the  
15 owner, an amount bearing the same ratio to the then current value of so much of the  
16 property as constituted an approved project as the amount of the State participation  
17 bore to the total eligible cost of the approved project, together with all costs and  
18 reasonable attorneys' fees incurred by the State in the recovery proceedings.

19 [(b)] (C) (1) The Department shall cause a notice of this right of recovery to  
20 be recorded in the land records of the county or Baltimore City in which the property  
21 is located before the State makes any funds available for the approved project.

22 (2) The recording of the notice:

23 (i) Does not create any lien against the property; but

24 (ii) Shall constitute notice to any potential transferee, potential  
25 creditor, or other interested party of the possibility that the State may obtain a lien  
26 under this title.

27 [(c)] (D) (1) In the event of an alleged sale or transfer as described above or  
28 in the event that a property is alleged to have ceased to be a facility as defined in this  
29 title, the Secretary of the Board of Public Works may file, in the circuit court for the  
30 county or Baltimore City in which the property is located, a claim under this title,  
31 styled as a civil action against the owner of the property and any other interested  
32 parties, including any transferor that the State wishes to make a party, together with  
33 sworn affidavits stating facts on which the allegations of default are based, as well as  
34 a detailed justification of the amount claimed.

35 (2) If the circuit court determines from the State's initial filing that  
36 there is probable cause to believe that a default has occurred, the court shall  
37 authorize a temporary lien on the property, in the amount of the State's claim, plus  
38 any additional amount estimated to be necessary to cover the costs and reasonable  
39

1 attorney's fees incurred by the State, or in such other amount as the court determines  
2 to be reasonable, pending full determination of the State's claim.

3           (3)       The temporary lien takes effect on the date of the court's  
4 authorization if the Secretary of the Board of Public Works records a notice of  
5 temporary lien in the land records of the county or Baltimore City in which the  
6 property is located within 10 days thereafter; otherwise, the temporary lien takes  
7 effect on the date a notice of temporary lien is recorded. While the temporary lien is in  
8 effect, neither the owner nor any person who acquired an interest in the property  
9 after the State first made funds available in connection with the property under this  
10 title may take any action that would affect the title to the property or institute any  
11 proceedings, to enforce a security interest or other similar rights in the property  
12 without the prior written consent of the State.

13           (4)       The owner of the property or any other interested party may obtain  
14 release of this temporary lien at any time by filing with the court a bond securing the  
15 payment in full of the State's claim and any additional amount necessary to cover the  
16 costs and reasonable attorneys' fees incurred by the State. The owner or other  
17 interested party may cause the release to be recorded in the land records.

18       [(d)]   (E)   (1)       Proceedings to determine the State's right to recover and the  
19 amount of its recovery under this title shall have priority over other civil proceedings  
20 in the circuit courts.

21           (2)       At the conclusion of full adversary proceedings on the issue of default  
22 and on any disputes over the amount of the State's recovery, the circuit court shall, if  
23 it finds that a default has occurred, issue a final judgment for the amount it finds to  
24 be recoverable by the State. All parties involved in the default, including in every case  
25 the owner of the property, shall be held jointly and severally liable to the State for the  
26 amount of the judgment. This amount, if it remains unpaid after the expiration of 30  
27 days following the court's final order, shall be a lien on the property, superior (except  
28 as the State may by written subordination agreement provide otherwise) to the lien or  
29 other interest of any mortgagee, pledge, purchaser, or judgment creditor whose  
30 interest became perfected against third persons after the State first made funds  
31 available in connection with the property under this title.

32           (3)       This lien takes effect on the 31st day following the court's final order  
33 if the Secretary of the Board of Public Works records a notice of lien in the land  
34 records of the county or Baltimore City in which the property is located on or before  
35 the 41st day following the final order; otherwise, the lien takes effect on the date a  
36 notice of lien is recorded. At the time this lien takes effect, any temporary lien then in  
37 effect shall be automatically and fully released, and the recorded notice of this lien  
38 shall constitute notice of the release of the temporary lien.

39           (4)       This lien may be enforced and foreclosed in accordance with the  
40 procedures prescribed in the Maryland Rules, except that neither the State nor any  
41 agent appointed by the State to sell the property need file a bond.

1 (5) The owner or any other interested party may obtain release of this  
2 lien at any time by paying to the State the full amount of the judgment rendered by  
3 the circuit court, together with interest from the date of judgment. On payment in  
4 full, the Secretary of the Board of Public Works shall cause a release to be recorded in  
5 the land records.

6 (6) If the circuit court finds that there has been no default or if the full  
7 amount of the court's judgment is paid to the State within 30 days after the court's  
8 final order, any temporary lien then in effect shall be released immediately and the  
9 Secretary of the Board of Public Works shall cause the release to be recorded in the  
10 land records.

11 [(e)] (F) All funds recovered as a result of this right of recovery shall be  
12 deposited in the Annuity Bond Fund and applied to the debt service requirements of  
13 the State. The Board of Public Works may waive the State's right of recovery if the  
14 Board determines that there is good cause for releasing the transferor, transferee, or  
15 owner from this obligation.

16 **Article - Health - General**

17 24-606.

18 (a) In accordance with this section, the [State] STATE:

19 (1) [shall] SHALL have the right to recover funds disbursed under this  
20 subtitle; AND

21 (2) MAY NOT RECOVER FUNDS DISBURSED UNDER THIS SUBTITLE FROM  
22 A COUNTY, BALTIMORE CITY, OR MUNICIPAL CORPORATION THAT IS THE LESSOR OF  
23 PROPERTY ON WHICH A PROJECT IS CONSTRUCTED OR A FACILITY IS OPERATED.

24 (b) In the event of failure to complete a project or failure to commence  
25 operation of a facility, the State may recover from the recipient of the funds disbursed  
26 for the project or facility or the owner of the property an amount equal to the amount  
27 of State funds disbursed for the project, together with all costs and reasonable  
28 attorneys' fees incurred by the State in the recovery proceedings.

29 (c) If, within 30 years after completion of a project, a community mental  
30 health facility, addiction facility, or developmental disabilities facility with respect to  
31 which funds have been paid under this subtitle is sold or transferred to any person,  
32 agency, or organization that would not qualify as an applicant under this subtitle, or  
33 that is not approved as a transferee by the Board of Public Works, or if, within the  
34 same period, a community mental health facility, addiction facility, or developmental  
35 disabilities facility ceases to be a "facility" as defined in this subtitle, then the State  
36 may recover from either the transferor or transferee or, in the case of a community  
37 mental health facility, addiction facility, or developmental disabilities facility that has  
38 ceased to be a "facility" as defined in this subtitle, from the owner, an amount bearing  
39 the same ratio to the then current fair market value of so much of the property as  
40 constituted an approved project as the amount of the State participation bore to the

1 total eligible cost of the approved project, together with all costs and reasonable  
2 attorneys' fees incurred by the State in the recovery proceedings.

3 (d) (1) The Department shall cause notice of the State's right of recovery to  
4 be recorded in the land records of the county or Baltimore City in which the property  
5 is located before the State makes any funds available for the approved project.

6 (2) The recording of the notice shall not create any lien against the  
7 property; however, it shall constitute notice to any potential transferee, potential  
8 creditor, or other interested party of the possibility that the State may obtain a lien  
9 under this subtitle.

10 (e) (1) In the event of a failure to complete the project or commence  
11 operations of the facility as described in subsection (b) of this section, or in the event  
12 of an alleged sale or transfer as described in subsection (c) of this section, or in the  
13 event that a property is alleged to have ceased to be a "facility" as defined in this  
14 subtitle, the Secretary of the Board of Public Works may authorize the Department to  
15 file, in the circuit court of the county or Baltimore City in which the property is  
16 located, a claim under this subtitle (styled as a civil action against the owner of the  
17 property and any other interested parties, including any transferor that the State  
18 wishes to make a party), together with a sworn affidavit stating facts on which the  
19 allegations of default are based, as well as a detailed justification of the amount  
20 claimed.

21 (2) If the circuit court determines from the State's initial filing that  
22 there is probable cause to believe that a default has occurred, the court shall  
23 authorize a temporary lien on the property, in the amount of the State's claim, plus  
24 any additional amount estimated to be necessary to cover the costs and reasonable  
25 attorney's fees incurred by the State, or other amounts as the court determines to be  
26 reasonable, pending full determination of the State's claim.

27 (3) The temporary lien takes effect on the date of the court's  
28 authorization if the State records a notice of temporary lien in the land records of the  
29 county or Baltimore City in which the property is located within 10 days thereafter;  
30 otherwise, the temporary lien takes effect on the date a notice of temporary lien is  
31 recorded. While the temporary lien is in effect, neither the owner nor any person who  
32 acquired an interest in the property after the State first made funds available in  
33 connection with the property under this subtitle may take any action that would  
34 affect the title to the property or institute any proceedings to enforce a security  
35 interest or other similar rights in the property, without the prior written consent of  
36 the State.

37 (4) The owner of the property or any other interested party may obtain  
38 release of this temporary lien at any time by filing with the court a bond securing the  
39 payment in full of the State's claim any additional amount necessary to cover the  
40 costs and reasonable attorneys' fees incurred by the State. The owner or other  
41 interested party may cause the release to be recorded in the land records.

1 (f) (1) Proceedings to determine the State's right to recover and the amount  
2 of its recovery under this subtitle shall have priority over other civil proceedings in  
3 the circuit courts.

4 (2) At the conclusion of full adversary proceedings on the issue of default  
5 and on any disputes over the amount of the State's recovery, the circuit court shall, if  
6 it finds that a default has occurred, issue a final judgment for the amount it finds to  
7 be recoverable by the State. All parties involved in the default, including in every case  
8 the owner of the property, shall be held jointly and severally liable to the State for the  
9 amount of the judgment. This amount, if it remains unpaid after the expiration of 30  
10 days following the court's final order, shall be a lien on the property, superior (except  
11 as the State may by written subordination agreement provide otherwise) to the lien or  
12 other interest of any mortgagee, pledgee, purchaser, or judgment creditor whose  
13 interest became perfected against third persons after the State first made funds  
14 available in connection with the property under this subtitle.

15 (3) This lien takes effect on the 31st day following the court's final order  
16 if the State records a notice of lien in the land records of the county or Baltimore City  
17 in which the property is located on or before the 41st day following the final order;  
18 otherwise, the lien takes effect on the date a notice of lien is recorded. At the time this  
19 lien takes effect, any temporary lien then in effect shall be automatically and fully  
20 released, and the recorded notice of this lien shall constitute notice of the release of  
21 the temporary lien.

22 (4) This lien may be enforced and foreclosed in accordance with the  
23 procedures prescribed in the Maryland Rules, except that neither the State nor any  
24 agent appointed by the State to sell the property need file a bond.

25 (5) The owner or any other interested party may obtain release of this  
26 lien at any time by paying the State the full amount of the judgment rendered by the  
27 circuit court, together with interest from the date of judgment. On payment in full,  
28 the State shall cause a release to be recorded in the land records.

29 (6) If the circuit court finds that there has been no default or if the full  
30 amount of the court's judgment is paid to the State within 30 days after the court's  
31 final order, any temporary lien then in effect shall be released immediately and the  
32 State shall cause a release to be recorded in the land records.

33 (g) (1) All funds recovered as a result of the State's right of recovery shall be  
34 deposited in the Annuity Bond Fund and applied to the debt service requirements of  
35 the State.

36 (2) The Board of Public Works may waive the State's right of recovery if  
37 the Board determines that there is good cause for releasing the transferor, transferee,  
38 or owner from this obligation.

39 24-706.

40 (A) (1) SUBJECT TO SUBSECTIONS (B) OR (D) OF THIS SECTION, THE STATE  
41 MAY RECOVER STATE FUNDS DISBURSED UNDER THIS SUBTITLE.

1           (2)     THE STATE MAY NOT RECOVER FUNDS UNDER THE CONDITIONS OF  
2 SUBSECTIONS (B) OR (D) OF THIS SECTION FROM A COUNTY, BALTIMORE CITY, OR  
3 MUNICIPAL CORPORATION THAT IS THE LESSOR OF PROPERTY ON WHICH A PROJECT  
4 IS CONSTRUCTED OR A FACILITY IS OPERATED.

5     [(a)]   (B)     If, within 30 years after completion of a project, a property with  
6 respect to which funds have been paid under this subtitle is sold or transferred to any  
7 person, agency, or organization that would not qualify as an applicant under this  
8 subtitle, or that is not approved as a transferee by the Board of Public Works, or if,  
9 within the same period, the property ceases to be a "facility" as defined in this  
10 subtitle, then the State may recover from either the transferor or transferee or, in the  
11 case of a property that has ceased to be a "facility" as defined in this subtitle, from the  
12 owner, an amount bearing the same ratio to the then-current value of so much of the  
13 property as constituted an approved project as the amount of the State participation  
14 bore to the total eligible cost of the approved project, together with all costs and  
15 reasonable attorneys' fees incurred by the State in the recovery proceedings.

16     [(b)]   (C)     (1)     Before the State makes any funds available for an approved  
17 project, the Department shall cause a notice of this right of recovery to be recorded in  
18 the land records of the county or Baltimore City in which the property is located.

19           (2)     The recording of the notice:

20                   (i)     Does not create any lien against the property; but

21                   (ii)    Shall constitute notice to any potential transferee, potential  
22 transferor, potential creditor, or other interested party of the possibility that the State  
23 may obtain a lien under this subtitle.

24     [(c)]   (D)     (1)     In the event of an alleged sale or transfer as described in  
25 subsection [(b)] (C) of this section, or in the event that a property is alleged to have  
26 ceased to be a "facility" as defined in this subtitle, the Secretary of the Board of Public  
27 Works may file, in the circuit court for the county or Baltimore City in which the  
28 property is located, a claim under this subtitle (styled as a civil action against the  
29 owner of the property and any other interested parties, including any transferor that  
30 the State wishes to make a party), together with sworn affidavits stating facts on  
31 which the allegations of default are based, as well as a detailed justification of the  
32 amount claimed.

33           (2)     If the circuit court determines from the State's initial filing that  
34 there is probable cause to believe that a default has occurred, the court shall  
35 authorize a temporary lien on the property, in the amount of the State's claim (plus  
36 any additional amount estimated to be necessary to cover the costs and reasonable  
37 attorneys' fees incurred by the State) or in other amounts as the court determines to  
38 be reasonable, pending full determination of the State's claim.

39           (3)     The temporary lien shall take effect on the date of the court's  
40 authorization if the Secretary of the Board of Public Works records a notice of  
41 temporary lien in the land records of the county or Baltimore City in which the  
42 property is located within 10 days thereafter, otherwise, the temporary lien shall take

1 effect on the date a notice of temporary lien is recorded. While the temporary lien is in  
2 effect, neither the owner nor any person who acquired an interest in the property  
3 after the State first made funds available in connection with the property under this  
4 subtitle, may take any action that would affect the title to the property or institute  
5 any proceedings to enforce a security interest or other similar rights in the property,  
6 without the prior written consent of the State.

7 (4) The owner of the property or any other interested party may obtain  
8 release of this temporary lien at any time by filing with the court a bond securing the  
9 payment in full of the State's claim and any additional amount necessary to cover the  
10 costs and reasonable attorneys' fees incurred by the State. The owner or other  
11 interested party may cause the release to be recorded in the land records.

12 [(d)] (E) (1) Proceedings to determine the State's right to recover and the  
13 amount of its recovery under this subtitle shall have priority over other civil  
14 proceedings in the circuit courts.

15 (2) At the conclusion of full adversary proceedings on the issue of default  
16 and on any disputes over the amount of the State's recovery, the circuit court shall, if  
17 it finds that a default has occurred, issue a final judgment for the amount it finds to  
18 be recoverable by the State. All parties involved in the default, including in every case  
19 the owner of the property, shall be held jointly and severally liable to the State for the  
20 amount of the judgment. This amount, if it remains unpaid after the expiration of 30  
21 days following the court's final order, shall be a lien on the property, superior (except  
22 as the State may by written subordination agreement provide otherwise) to the lien or  
23 other interest of any mortgagee, pledgee, purchaser, or judgment creditor whose  
24 interest became perfected against third persons after the State first made funds  
25 available in connection with the property under this subtitle.

26 (3) This lien takes effect on the 31st day following the court's final order  
27 if the Secretary of the Board of Public Works records a notice of lien in the land  
28 records of the county or Baltimore City in which the property is located on or before  
29 the 41st day following the final order, otherwise, the lien takes effect on the date a  
30 notice of lien is recorded. At the time this lien takes effect, any temporary lien then in  
31 effect shall be automatically and fully released, and the recorded notice of this lien  
32 shall constitute notice of the release of the temporary lien.

33 (4) This lien may be enforced and foreclosed in accordance with the  
34 procedures prescribed in the Maryland Rules, except that neither the State nor any  
35 agent appointed by the State to sell the property need file a bond.

36 (5) The owner or any other interested party may obtain release of this  
37 lien at any time by paying to the State the full amount of the judgment rendered by  
38 the circuit court, together with interest from the date of judgment. On payment in  
39 full, the Secretary of the Board of Public Works shall cause a release to be recorded in  
40 the land records.

41 (6) If the circuit court finds that there has been no default or if the full  
42 amount of the court's judgment is paid to the State within 30 days after the court's

1 final order, any temporary lien then in effect shall be released immediately and the  
2 Secretary of the Board of Public Works shall cause the release to be recorded in the  
3 land records.

4 [(e)] (F) (1) All funds recovered as a result of this right of recovery shall be  
5 deposited in the Annuity Bond Fund and applied to the debt service requirements of  
6 the State.

7 (2) The Board of Public Works may waive the State's right of recovery if  
8 the Board determines that there is good cause for releasing the transferor, transferee,  
9 or owner from this obligation.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2001.